

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

JAMES M. FERGUSON, #60446

PLAINTIFF

v.

CIVIL NO. 1:05-cv-321-LG-RPM

ANDREW BALIUS and ALAN L. BOND

DEFENDANTS

ORDER

BEFORE THE COURT is *pro se* Plaintiff James M. Ferguson's Motion [15] "to remove strike" filed in this closed § 1983 case.¹ On June 22, 2021, Ferguson filed a signed version of his Motion. (See ECF No. 22).

Ferguson filed this Complaint on June 30, 2005, alleging a constitutional violation for being charged with a frivolous indictment in state court. (See Mem. Dismissing Compl., at 1, ECF No. 10). On January 11, 2006, the Court dismissed Ferguson's Complaint, finding his allegations to be malicious and that any non-malicious claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). (See *id.* at 3-4; *see also* J., ECF No. 11). The Court entered its Judgment the same day. (See J., ECF No. 11).

When Ferguson filed his Motion [15] to remove strike he also filed a Notice of Appeal. *See Ferguson v. Balias*, No. 21-60310 (5th Cir. 2021). Ferguson's request to

¹ The Prison Litigation Reform Act provides that a prisoner's privilege to proceed *in forma pauperis* ("IFP") should be denied if he has, on three prior occasions during detention, had an action or appeal dismissed as frivolous, malicious, or for failure to state a claim. *See* 28 U.S.C. § 1915(g); *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1723 (2020) (stating that this "has become known as the three-strikes rule").

proceed *in forma pauperis* on appeal was denied based on his three-strikes. (See Order, ECF No. 24). On September 13, 2021, the Fifth Circuit dismissed Ferguson's appeal for want of prosecution because Ferguson failed to pay the appeal filing fee. (See J., ECF No. 26).

In his Motion [15] to remove strike, Ferguson is asking the Court to "expunge" this strike from his "file." (Mot. at 1, ECF No. 15.) Ferguson provides no basis or authority for his request. Likewise, the Fifth Circuit dismissed Ferguson's simultaneously filed appeal. Ferguson's Motion is not well-taken and will be denied. Accordingly,

IT IS THEREFORE ORDERED AND ADJUDGED that Ferguson's Motion [15, 22] to remove strike is **DENIED**.

SO ORDERED AND ADJUDGED this the 22nd day of November, 2021.

s/ *Louis Guirola, Jr.*

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE